

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Standardized and Enhanced Disclosure	)	MM Docket No. 00-168
Requirements for Television Broadcast	)	
Licensee Public Interest Obligations	)	
	)	
Extension of the Filing Requirement	)	MM Docket No. 00-44
For Children's Television Programming	)	
Report (FCC Form 398)	)	
	)	
Notice of Public Information Collection(s)	)	OMB Control No. 3060-0214
Being Reviewed by the Federal	)	
Communications Commission	)	

**COMMENTS OF  
THE ABC TELEVISION AFFILIATES ASSOCIATION**

“[T]he Commission's [television program] logging requirements constituted the largest government burden on business in terms of total burden hours.”

*Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C. 2d 1076, 1106 (1984) (citing GAO, *Federal Paperwork: Its Impact on American Business*, pp. 43-44 (1978)).

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May 12, 2008

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**COMMENTS OF  
THE ABC TELEVISION AFFILIATES ASSOCIATION**

The ABC Television Affiliates Association ("the Association")<sup>1</sup> submits these comments in response to the Commission's Paperwork Reduction Act Notice regarding the information collection and reporting requirements created by the Commission's *Enhanced Disclosure Order*.<sup>2</sup>

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<sup>1</sup> The Association is a non-profit trade association whose members consist of approximately 170 local television broadcast stations throughout the country that are affiliated with the ABC Television Network.

<sup>2</sup> See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 23 FCC Rcd 1274 (2008) ("*Enhanced Disclosure Order*"); Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested, 73 Fed. Reg. 13541 (Mar. 13, 2008) ("*PRA Notice*").

## I. INTRODUCTION

The *Enhanced Disclosure Order* requires television broadcasters to prepare, submit to the Commission, and place in their public inspection files a standardized quarterly report (FCC Form 355) detailing every program or program segment aired by each station that “includes significant treatment of community issues”<sup>3</sup> and falls within any of several (frequently overlapping and hopelessly ambiguous) program categories, including national news, local news, local civic affairs programming, local electoral affairs programming, independently produced programming, other locally originated programming, and paid and unpaid public service announcements. The *PRA Notice* seeks comment on the paperwork burdens imposed on licensees by Form 355, including the “practical utility” of the information to be collected, “the accuracy of the Commission’s burden estimate,” “ways to enhance the quality, utility, and clarity of the information collected,” and means by which the paperwork burden can be minimized.<sup>4</sup>

The Form 355 reporting requirement, which the Commission characterizes as not “unduly burdensome for licensees,”<sup>5</sup> is, in fact, a throwback to a bygone era of irrational regulatory exuberance. Contrary to the Commission’s assertion, the Form 355 reporting requirement would impose an excessive level of recordkeeping, paperwork, and reporting on licensees. More than 20 years ago, the Commission eliminated the then-existing requirement that stations maintain detailed and exhaustive “program logs”<sup>6</sup> in favor of a flexible rule requiring each licensee to

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<sup>3</sup> *Enhanced Disclosure Order*, Appendix B, pp. 33-35.

<sup>4</sup> *PRA Notice*, 73 Fed. Reg. at 13541; *see also* Paperwork Reduction Act, 44 U.S.C. §§ 3506(c)(2)(A).

<sup>5</sup> *Enhanced Disclosure Order*, ¶ 34.

<sup>6</sup> *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C. 2d 1076, 1106 (1984) (“*Television Deregulation Order*”).

maintain a list each quarter of a representative sample of the programs the station had broadcast in response to the most significant issues of local importance.<sup>7</sup> Thirty years ago, the General Accounting Office, in commenting on the Commission's program log requirement—a requirement significantly less burdensome than the new Form 355 requirement—observed that “the Commission's [television program] logging requirements constituted the largest government burden on business in terms of total burden hours.”<sup>8</sup> Recognizing the extraordinary, unwarranted burdens imposed on broadcast licensees by the program logging requirement, the Commission opted for a more flexible system of recording and reporting program stewardship—issues/programs lists. Form 355 replaces the current issues/programs list requirement<sup>9</sup>—and, for all practical purposes, represents a revival of the outdated and extraordinarily burdensome program log requirement.

The Commission has indicated it expects the significant monitoring and reporting requirements created by Form 355 to impose a minimal and reasonable burden on stations,<sup>10</sup> in order to assure licensee responsiveness to community needs and accountability. “Localism” plainly is the bedrock principle of the nation's broadcast channel assignments and regulatory scheme. However, there is no evidence of record that the existing program documentation system—quarterly issues/programs lists—is inadequate or that it denies the public or the Commission an opportunity to review licensee performance, and there is no evidence of record

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<sup>7</sup> *Id.* at 1110-11.

<sup>8</sup> *Id.* at 1106 (citing GAO, *Federal Paperwork: Its Impact on American Business*, pp. 43-44 (1978)).

<sup>9</sup> See *Enhanced Disclosure Order*, ¶¶ 32, 34.

<sup>10</sup> The burden associated with the reporting obligation includes “the time to read the instructions, look through existing records, gather and maintain the required data, and actually complete and review the form or response.” *Enhanced Disclosure Order*, Appendix B, p. 30.

that the horrendous recordkeeping burden that would be imposed on licensees by the new Form 355 would in any way enhance the goals of “localism.”

## **II. THE COMMISSION UNDERESTIMATES THE BURDENS THAT WILL BE IMPOSED BY FORM 355**

The Commission has significantly underestimated the recordkeeping burdens associated with the Form 355 reporting requirement.<sup>11</sup> The burdens that will be imposed on licensees are evident from the face of the new Form 355: The form (itself 12 pages in length) requires broadcasters to identify, categorize, and report in detail every program or program segment they air that addresses “community issues.” The task is not one easily performed by consulting existing documents or data compilations. Instead, broadcasters will be required to review virtually all program content that is broadcast to identify programs (and discrete “program segments” and announcements) that fall into one or more of the Commission’s several specified categories. That task is, inherently, time consuming and not capable of automation.<sup>12</sup> The

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<sup>11</sup> According to the data included in the *PRA Notice*, the Commission estimates that the net increased burden imposed on licensees by Form 355 will be no more than 2.1 hours per week. That number is derived by subtracting from the Commission’s estimated 2,072,814 “total annual burden” hours (*see PRA Notice*, 73 Fed. Reg. at 13542) the total burden of 1,818,003 hours to comply with the Commission’s existing public inspection rules (*see* [http://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=200803-3060-006](http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200803-3060-006) (last viewed May 12, 2008)), and dividing the result by 2315 total VHF/UHF/Class A stations (*see* Media Bureau, “Broadcast Station Totals as of December 31, 2007,” (rel. March 18, 2008), *available at* [http://www.hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-280836A1.doc](http://www.hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-280836A1.doc)), which results in a total annual increased burden of 110 hours per station, or 2.1 hours per station per week.

<sup>12</sup> The *PRA Notice* invites comments on, among other things, ways in which “automated collection techniques” can be employed to “minimize the burden of the collection of information on” licensees. 73 Fed. Reg. at 13541. Because news programs are likely to be the source of much of the programming to be reported on Form 355, and because those news programs are often live, unscripted, and rapidly evolving, it is unlikely that “automated collection techniques” will be of any significant use in alleviating the information collection and reporting burdens imposed on licensees. Importantly, Form 355 calls for the exercise of licensee judgment as to whether and how a multitude of programs and program segments are to be reported; there is, accordingly, little room for automation to be employed in the categorization required by the (continued...)

program monitoring requirement inherent in the reporting obligation alone—a highly labor-intensive exercise—will impose a significant burden on licensees.

Identifying the universe of reportable information from within the broadcaster's programming is only the beginning of the reporting obligation imposed by the new Form 355. Licensees must collect the reportable data, identify the category in which each program or program segment fits, prepare the program descriptions the form calls for (including details such as program titles, dates and times aired, length of programs or segments, and for several categories, additional details such as whether the program or segment was locally produced, was previously aired, or was part of a regularly scheduled news program), calculate categorical programming totals, and report that voluminous information to the Commission on a quarterly basis. Licensees also must review the entirety of their programming every quarter to calculate the total number of hours of programming that were closed captioned or for which video description services were voluntarily provided, and they must further report whether the licensee broadcast any information about a (then-)current emergency.<sup>13</sup>

The Association's member stations expect that the reporting obligation will require most stations to devote at least a part-time (if not a full-time) staff position solely to the collection and reporting required by the new form.<sup>14</sup> That conclusion is supported by the experiences of several stations owned and/or operated by member companies of the Association that participated in a one-week "test" of the Form 355 reporting requirements conducted by the National Association of Broadcasters. On average, the participating stations spent *nearly 35 hours* in a single week

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form.

<sup>13</sup> See *Enhanced Disclosure Order*, ¶¶ 46-48.

<sup>14</sup> The additional personnel burden will be particularly difficult for stations to support as they prepare for the digital television conversion in 2009—itself a labor-intensive undertaking.

collecting, analyzing, and recording the information required by Form 355.<sup>15</sup> As those data suggest, the reporting obligation will demand far more of broadcasters than simply compiling data at the end of a quarter for submission to the Commission; instead, the detailed reporting requirements will necessitate the *ongoing* collection and distillation of reportable information on (at least) a daily basis. For many licensees, the expenses associated with the new quarterly reporting requirement could directly and significantly impact the station's ability to provide the very kind of community-responsive programming the Commission and the Communications Act encourage.

The burdens imposed by the new reporting requirement are compounded by the lack of clarity, definition, and instruction provided by the Commission's form. The Commission has defined certain terms (such as "local electoral affairs programming") in relatively straightforward fashion; it has defined others (such as "independently produced programming") in ways that require additional investigation by broadcasters before they can be certain whether a program or segment meets the definition;<sup>16</sup> and it has left still others (including essential terms like "significant treatment" and "community issues") altogether undefined.<sup>17</sup> Against the

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<sup>15</sup> That average in fact under-represents the burden imposed on the participating stations, because at least one station did not include time spent reviewing national news broadcasts to identify reportable program segments.

<sup>16</sup> "Independently produced programming" is defined as "programming aired during prime-time that is produced by an entity not owned or controlled by an owner of a national television network . . . . If an owner of a national television network owns or controls more than a one-third financial interest in the program, acts as the distributor of such program in syndication, or owns the copyright in such program, the owner of a national television network will be considered to be the producer of that program." *Enhanced Disclosure Order*, Appendix B, p. 29. To determine whether a program or segment is reportable as an "independently produced" program, then, licensees will be required independently to investigate the program's or segment's financial and copyright particulars.

<sup>17</sup> In one case, the Commission has defined an important term in a completely circular fashion. Form 355 requires licensees to report all "programs aired that were aimed at serving the (continued...)"

backdrop of definitions and instructions that are uncertain at best, the form requires licensees to make judgments about what programming is reportable in what category<sup>18</sup>—a task that is, by its very nature, inefficient and uncertain, and one that plainly will result in the opposite of standardized reporting, as no two licensees can be expected to categorize a program or segment in precisely the same way. Even where defined categories of reportable programming are relatively clear, they often overlap; one can readily imagine two licensees reaching very different conclusions about whether a particular program segment is reportable as “local news,” “local civic affairs programming,” or “local electoral affairs programming.” Likewise, even the seemingly straightforward term “national news” threatens to create ambiguities in reporting, as licensees might treat national “news magazine” and talk show programs (which often include news-like segments that address community issues) very differently. In short, a great deal of issues-responsive programming defies the sort of simplification inherent in the Commission’s new categorical approach.

The experiences of the member companies’ stations that participated in the test of Form 355 reflect the costs inevitably associated with the ambiguities in the form and the lack of clarity in the reporting instructions. The ambiguities in definition and instruction resulted in confusion, frustration, and inefficiency as broadcasters wrestled with such issues as how to distinguish

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needs of underserved communities” and defines underserved communities as “demographic segments of the community of license to whom little or no programming is directed.” *Enhanced Disclosure Order*, Appendix B, p. 35. The Commission, then, asks licensees to report on programming that they directed toward segments of the community to whom no programming is directed. According to the definition, as soon as a broadcaster “directs” any significant amount of programming to an “underserved” segment of the community, that group is no longer “underserved”—and there is, accordingly, nothing to report.

<sup>18</sup> See *Enhanced Disclosure Order*, ¶ 43 (noting that the Commission will “generally rely on the good faith judgment of the broadcaster” to determine “whether a program falls within [one of the several Form 355 programming] categories”).

between (and calculate reportable totals for) “local news,” “local civic affairs programming,” “local electoral affairs programming,” and “other” local programming, and whether certain programming is “locally oriented,”<sup>19</sup> “locally originated,”<sup>20</sup> both, or neither. As the participating stations’ experiences make clear, the form leaves much for determination by licensees, injecting uncertainty into the collection and reporting exercise at the outset—and further magnifying the recordkeeping burden.

### **III. THE FORM 355 REPORTING REQUIREMENT HAS LITTLE PRACTICAL UTILITY OR BENEFIT**

The significant burdens imposed by the new Form 355 are not offset by any appreciable benefit, either to the Commission or to the public. Form 355 would replace the current issues/programs list requirement, purportedly in service of the Commission’s desire to “facilitate access to . . . information” about licensees’ community issues programming and to “make broadcasters more accountable to the public.”<sup>21</sup> But there is no evidence in the record of the *Enhanced Disclosure* proceeding (or, for that matter, elsewhere<sup>22</sup>) to suggest that the issues/programs list is failing to serve those goals (at significantly less expense to broadcasters), the Commission’s declaration that “[t]he problem is systemic” notwithstanding.<sup>23</sup> Tellingly, since the issues/programs list requirement was implemented nearly two decades ago, the Commission has not undertaken an industry-wide review of licensees’ efforts to comply with the

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<sup>19</sup> *Enhanced Disclosure Order*, Appendix B, p. 29.

<sup>20</sup> *Enhanced Disclosure Order*, Appendix B, p. 34.

<sup>21</sup> *Enhanced Disclosure Order*, ¶ 32.

<sup>22</sup> See *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 (2004); *In the Matter of Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324 (2007).

<sup>23</sup> *Enhanced Disclosure Order*, ¶ 37.

requirement. It thus has no real-world evidence upon which to premise its apparent assumption in this proceeding that the current requirement is failing either to hold broadcasters “accountable” to their community service mandate or to provide necessary information about broadcasters’ community issues programming in a way that is accessible to and understandable by the public.<sup>24</sup>

The *PRA Notice* invites commenters to address “ways to enhance the quality, utility, and clarity of the information collected” and “ways to minimize the burden of the collection of information on the respondents.”<sup>25</sup> The Commission’s lack of careful study of licensees’ compliance with, and the value to the public of, the issues/programs list requirement points to a simple and obvious answer: Rather than discarding the issues/programs list requirement altogether in favor of a significantly more burdensome, highly detailed, categorical reporting requirement, the Commission should consider “standardizing” the existing issues/programs list requirement to create “[a] consistent format for reporting by all licensees”<sup>26</sup> and thereby reduce or eliminate the (theoretical) inconsistency that troubles the Commission. Such a moderate step

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<sup>24</sup> Although the Commission disclaims any intent to “adopt quantitative programming requirements or guidelines,” *Enhanced Disclosure Order*, ¶ 36, the burdensome Form 355 reporting requirement will almost certainly have at least an indirect effect on licensees’ substantive programming. It is an elementary financial reality that finite resources devoted to a recordkeeping requirement are unavailable for use in creating programming responsive to community issues. Ironically, the burden will fall most disproportionately on stations that already provide a significant volume of programming that addresses community issues. Those stations will be required to review, analyze, categorize, and report an even greater volume of information, at even greater expense, thereby making an even more significant impact on the station’s ability to devote scarce resources to the creation of new community programming or to other efforts to identify and address community needs.

<sup>25</sup> *PRA Notice*, 73 Fed. Reg. at 13541.

<sup>26</sup> *Id.* at 13542.

would be far less burdensome to licensees—and every bit as likely to address the Commission’s stated goals as the lengthy and detailed Form 355.

The lack of *necessity* for the burdensome Form 355 recordkeeping requirement is matched by the lack of *utility*. The Association expects that the end result of the Form 355 quarterly reporting requirement will be compilations of information so voluminous and detailed that they are, effectively, useless. Because the Commission requires that *every* program and program segment that deals significantly with “community issues” be reported, both the Commission and the public likely will be confronted with quarterly reports that amass such detail that neither reader nor regulator will be able to make use of the information they contain. Over the course of a three-month period, a station that airs a significant amount of community-issues programming will create a form that contains hundreds if not thousands of detailed and descriptive entries. The Commission’s stated goal to “help foster communications between the broadcaster and the public it serves”<sup>27</sup> is not obviously furthered by requiring broadcasters to track and report programs and program segments in such volume and detail that the report itself becomes incomprehensible.

In short, the Commission’s stated goal—to facilitate communication between broadcasters and the communities they serve—is not demonstrably or obviously furthered by the extraordinarily burdensome Form 355 reporting requirement. The information collection is not “necessary for the proper performance of the functions of the Commission,”<sup>28</sup> but instead imposes a significant and heavily burdensome recordkeeping requirement in the absence of any articulated justification or potential real-world utility.

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<sup>27</sup> *Enhanced Disclosure Order*, ¶ 51.

<sup>28</sup> *PRA Notice*, 73 Fed. Reg. at 13541.

## **CONCLUSION**

For the foregoing reasons, the Association respectfully urges the Commission to refrain from submitting the new enhanced disclosure requirement to the Office of Management and Budget for approval, at least until pending challenges to the *Enhanced Disclosure Order* have been resolved.

Respectfully submitted,

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May 12, 2008

### **Declaration of Julia C. Ambrose**

I, Julia C. Ambrose, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration.

2. I am an attorney at Brooks, Pierce, McLendon, Humphrey, & Leonard, LLP, and I am the principal drafter of the comments filed by the ABC Television Affiliates Association ("the Association") in the Enhanced Disclosure proceeding, MM Docket Nos. 00-168, 00-44.

3. Several stations owned and/or operated by certain of the Association's member companies participated in a one-week test of the reporting obligations created by Form 355. The information referenced in the Association's comments is drawn directly from data submitted by participating stations, which I reviewed. The data reported are true and accurate summaries of the participating stations' comments and responses. All copies of submissions used in preparing these comments are on file with the Association.

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge, information, and belief.

Dated: May 12, 2008

  
Julia C. Ambrose